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SUBJECT: DVD PIRACY: AN INCREASINGLY SERIOUS PROBLEM IN
IRELAND

REF: STATE 58065

¶1. (SBU) Summary: Despite strong domestic IPR legislation, DVD piracy is on the rise in Ireland, a problem that judicial leniency in IPR court cases has made difficult to combat. The counterfeit DVD market is now reportedly 1.5 times the size of the legitimate market, with counterfeiters earning euro 60 million annually, according to entertainment industry and police sources. Crime families among the Travellers, an ethnic Irish community living mainly out of mobile homes, run the major DVD pirating operations in Ireland. The police have been active in raiding counterfeiting operations and open-air DVD markets, but are frustrated by weak judicial penalties given to IPR violators, often just several hundred euro. To combat burgeoning DVD piracy and to strengthen penalties, Justice Minister Michael McDowell on May 5 unveiled a Government inter-departmental working group to liaise with the entertainment industry. Representatives of U.S. studios wish to give the working group a chance to act against IPR violations before deciding whether to make a "Special 301" submission for Ireland. Post intends to offer USG IPR training courses to Irish judges, whose tepid response to piracy runs counter to Irish aspirations for a vibrant domestic film industry and, more broadly, for a knowledge-based economy. End summary.

DVD Piracy on the Rise

¶2. (SBU) DVD piracy is an increasingly serious problem in Ireland, notwithstanding strong domestic IPR legislation, according to entertainment industry and police sources. In terms of volume, the counterfeit DVD market is 1.5 times the size of the legitimate market, emboffs were told by the Irish National Federation Against Copyright Theft (INFACT), a lobby funded by the Motion Picture Association (MPA) Europe. INFACT also claimed that DVD pirates earn roughly euro 60 million annually, at a cost of euro 115 million to the legitimate DVD industry. Separately, the Irish police informed emboffs that they had seized 173,468 pirated DVDs in 2005, an increase of 43,468 over 2004. Already in 2006, police have confiscated roughly 40,000 pirated DVDs. The police believe that DVDs have replaced clothing as the most popular counterfeit items in Ireland, due to the ease of manufacturing, the relatively small amount of storage space required, and high profitability.

Travellers: The Major Pirates

¶3. (SBU) Crime families among the Travellers, an ethnic Irish nomadic community living mainly out of mobile homes, run the major DVD pirating operations in Ireland, according to the police and INFACT. Two Traveller families work in Ireland's northern border areas, a third family dominates the Midlands, and a fourth family runs the Tralee/Galway market

in western Ireland. The Dublin market is controlled not by one family, but rather several Traveller individuals. INFACT estimates that roughly 500 pirates among the various families supply the Irish market. Police told emboffs that the Travellers usually secure a master copy of a DVD or CD, often either from the United States or Thailand, and produce counterfeit copies in bulk. They then sell the pirated items at over 600 open-air markets and smaller street-side venues, from car trunks, and, more recently, door-to-door. Pirated DVDs sell for euro 5-10, as compared with the euro 20-25 price of legitimate DVDs and daily DVD rentals of euro 4-5.

Police Response

¶4. (SBU) The police conduct raids nearly every weekend in markets across Ireland, according to Detective Sergeant Martin Mooney of the National Bureau of Criminal Investigation (NBCI) anti-racketeering unit, which has lead responsibility for enforcing IPR law. Mooney did not have year-end figures for 2005, but he told emboffs that his unit was involved in 1,000 raids in 2004, as opposed to 48 in ¶2002. He noted that his unit consisted of three sergeants, including himself, and nine guards - two more guards than last year, reflecting growing concern about IPR violations. The most common targets of police raids are the large Tullamore and Clara markets in the Midlands county of Offaly, where pirated goods with a market value between euro 250 and 1,000 are regularly confiscated. Mooney said that his unit coordinated regularly with local police, the Police Service of Northern Ireland (PSNI), and INFACT representatives to conduct surveillance, gather intelligence, and carry out

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raids. In the biggest bust of 2005, Mooney's unit raided a printing laboratory in County Meath, northeastern Ireland, arresting three individuals and seizing 15 computer towers, each containing 90 DVD burners with the capacity to produce 3 million DVDs per year (versus total annual legitimate production of 8 million DVDs in Ireland). In addition, they confiscated 8,000 pirated DVDs and 25 printers used to copy and print movie sleeves.

Weak Judicial Action

¶5. (SBU) Whereas Ireland's Copyright and Related Rights Act 2000 is considered model IPR legislation within the EU, the weak penalties levied by judges hamper enforcement efforts, said Mooney and INFACT. On a summary conviction without jury, the law allows for the maximum fine of euro 1,900 for each infringing pirated copy, article, and device, or a maximum prison term of twelve months. On a conviction before a jury, the Act permits a maximum fine of euro 127,000, and/or a maximum prison term of five years. In practice however, judges typically impose sentences far below the maximum allowed. In 2005 for example, the police pursued the prosecution of 150 individuals for IPR violations, 70 of whom were convicted, with the remaining cases ongoing. The average fine imposed was euro 100-250, and Mooney was not aware of any conviction involving incarceration. In one case in 2005, police seized euro 300,000 worth of pirated DVDs from two brothers. Following arrest and conviction under the Copyright Act 2000, one brother, previously convicted and fined under the law, was fined euro 250, while the other brother, never before convicted under the Copyright Act 2000, was fined euro 300.

¶6. (SBU) Irish judges apparently view DVD counterfeiters as doing little harm to society, emboffs were told by INFACT Director General Brian Finegan. A part of the problem, he explained, was that Ireland had no separate court circuit to handle economic crime specifically. Judges often heard cases of violent or narcotics-related crime the same day that they

handled DVD piracy prosecutions, and they were thus inclined to mete out comparatively less serious penalties for sentenced counterfeiters. Finegan noted the irony, however, that the street value of pirated DVDs in IPR court cases regularly exceeded the worth of narcotics involved in drug cases. An upshot of inconsequential judicial fines, he added, was the large number of repeat offenders processed by police and the courts. INFAC legal counsel Michael Hinkson explained further to emboffs that the bench's tradition of "sacred independence" and judicial activism limited the influence of industry and the Irish Government on the severity of the sentences.

Government Response

17. (SBU) On May 5, Minister of Justice, Equality, and Law Reform Michael McDowell announced the formation of an Inter-departmental Working Group (IWG) to address burgeoning DVD piracy. The IWG will be chaired by Department of Justice Secretary General Sean Aylward and will include

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representatives from the following departments: Enterprise, Trade, and Employment; Social and Family Affairs; Arts, Sports, and Tourism; Environment, Heritage, and Local Government; Office of Revenue Commissioners; and, the police.

Minister McDowell noted in his announcement that DVD piracy was not a victimless offense, but rather a form of theft that threatened Ireland's 5,000 cinema industry workers and funded other sorts of organized crime, including drug trafficking. He added that the IWG would soon meet with, and take submissions from, affected industry groups on steps to combat DVD counterfeiting. These discussions would focus in part on ensuring the severity of sentences related to piracy crimes.

Industry Response

18. (SBU) Recent months have seen stronger efforts by entertainment industry groups to overcome rivalries and to coordinate their government lobbying efforts, according to INFAC Director General Finegan. The two major lobbies are INFAC, the local voice of the MPA and U.S. studios, and the Intellectual Property Alliance, an Irish organization representing local DVD retailers, including, most prominently, XtraVision, a Blockbuster subsidiary. In April, INFAC and IPA created the Anti-Piracy Steering Committee with representatives from both organizations to act as an advisory body to the Government. Minister McDowell's May 5 announcement, in fact, came at an entertainment industry seminar hosted by the Anti-Piracy Steering Committee, which

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decorated the venue with posters depicting children watching DVDs with men in hooded, terrorist garb. On May 12, moreover, the Committee met with the IWG in the first of a series of discussions. Finegan said that the Committee would press the IWG for supplemental IPR legislation that would include mandatory minimum sentences for IPR violators. He added that whereas the MPA had considered making a Special 301 submission on Ireland due to increasing DVD piracy, the MPA now wished to give the Working Group a chance to act against IPR violations (a view that MPA Europe representatives repeated to emboff at the May 5 seminar).

Comment: Judicial Training Available?

19. (SBU) In light of DVD piracy trends, Post intends to consider Irish judges as potential candidates for future IPR training courses of the sort offered in reftel. We would appreciate knowing of any IPR training that is designed specifically for members of the judiciary. Judicial leniency is not unique to DVD piracy cases, but is a publicly lamented hallmark of the Irish bench, as seen in the relatively light

sentences given to high-profile violent criminals. In the case of DVD piracy, weak judicial penalties encourage those who would rip off not only U.S. studios, but also Irish film-makers, who have recently begun to attract international acclaim. An Irish film, "Six Shooter," took this year's Oscar for best short film, and another film, "The Wind That Shakes the Barley," won the Palme d'Or at Cannes on May 28. The judiciary's tepid response to IPR violations runs counter to Ireland's aspirations for a more vibrant domestic film industry and, more broadly, for an economic future that hinges on knowledge, research, and creativity -- in short, intellectual content.

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